

September 23, 2010

Board of Education
Middletown Enlarged City School District
223 Wisner Avenue
Middletown, New York 10940

Dear Members of the Board of Education:

Thank you for giving me the opportunity to speak to you at your meeting on September 15, 2010. I felt it was important to present to you directly the City's position regarding the construction of the new Chorley School and the school's connection to the City's sewage disposal system. Unfortunately, it became apparent that certain individuals - members of the Board and members of the public - either did not understand the City's position or chose to ignore my direct statements. As a result, I am writing this letter to present to you, again, the City's position and to offer a way for us to resolve our differences.

At the outset, I want to reiterate a couple of points. First, the City does not oppose the construction of the new Chorley School; in fact, and as I have said on many occasions, I support the construction. Second, the City has not been the cause of any delay in the construction schedule. As you are well aware, the State Education Department would not authorize the School District to solicit construction bids until the District first resolved its outstanding issues with the New York State Historic Preservation Office and the Orange County Health Department. It was not until July 2010 that you obtained such authorization from the SED. The City played no role in that process.

The District sued the City right after Dr. Eastwood unilaterally cut off our negotiations with the SED and representatives in the State Legislature. Dr. Eastwood decided that it would be better to argue to the Court that it is illegal for the District to contribute to the cost of a new sewer pipe, even if its purpose is to carry sanitary sewage from a new school, despite having been presented with statutory and case authority that showed the District has that power, and despite the SED's willingness to assist the District in financing that cost. We have submitted our response to your papers and now the Court will decide, but it could take many months before we get a decision, and our waiting for that decision will only delay the construction even further.

Here is what I am proposing to make sure that our disagreement about the sewer line does not prevent the new school from being constructed as soon as possible:

The City will immediately issue the permit necessary for the District to connect the new school to the City's sewer system. If, after the exhaustion of all legal remedies (including appeals), the District wins the lawsuit, the City will pay one hundred percent of the cost of replacing the sewer line. If, on the other hand, the City wins the lawsuit, the District will pay fifty percent of the replacement cost.

The City believes that this proposal is both fair and reasonable. For one thing, if the Court's decision upholds the City's argument that the District is legally permitted to pay for the sewer line, such decision will not likely specify the amount the District will be required to pay. The City would then be free to treat the District like any other developer and thus require the District to pay the *entire* cost of the additional burden on the sewer system created by the new school. (The City recently entered into this type of arrangement with developers in the Dolson Avenue area, requiring those developers to pay the entire cost to replace a sewer line that would have been overburdened by those developers' projects.) Also, about fifty percent of the District's taxpayers reside outside the City. There is no reason why the City's taxpayers should be asked to absorb the entire cost of the sewer line if the Court determines that there is nothing to prevent a contribution by the District. Under our proposal, if the City wins, the City and the District will split the cost evenly, which means that City residents will be contributing seventy-five percent of the replacement cost and the District's residents outside the City will bear only twenty-five percent.

This proposal is made without prejudice to the City's position and is being offered in an attempt to settle the lawsuit and get the construction project moving without any further delay.

Please be advised that if the Board rejects this proposal and the City wins the lawsuit, the City will seek one hundred percent of the cost of the sewer line from the District.

I look forward to your response.

Very truly yours,

Joseph M. DeStefano, Mayor

cc: Common Council, City of Middletown
Jacob Tawil, Commissioner of Public Works
Richard J. Guertin, Corporation Counsel